

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8292 OF 2024

Dr.Rajendra Shankar Mahamuni
Age: 65 years, Occupation: Retired,
R/at : Dhanlaxmi; 53, Ashoknagar Society
Range Hill Road, Pune 411 007 ... Petitioner

Versus

- 1) Fergusson College, Pune
Fergusson College Road,
Pune 411 004
- 2) The Secretary,
Deccan Education Society,
Fergusson College Compound,
Pune 411 004
- 3) Savitribai Phule Pune University
Having address at Ganeshkhind Road,
Ganeshkhind, Pune 411 007
- 4) The Directorate of Higher Education,
State of Maharashtra,
3, Mahapalika Marg, Post Box No. 1967,
Mumbai 400 001
- 5) The Jt. Director, Higher Education
Having address at 17, Dr. Ambedkar Road,
Camp, Pune 411 001
- 6) State of Maharashtra,
Through Department of Technical Education,
Mantralaya, Mumbai 400 020 ... Respondents

...

Ms.Aditi S. Naikare with Mr.Avadhut V. Patil for the Petitioner.
Mr.Mandar Limaye for Respondent Nos. 1 and 2.
Ms.Priyanka Chavan, AGP for Respondent Nos. 4 to 6, State.

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**CORAM : RAVINDRA V. GHUGE &
GAUTAM A. ANKHAD, JJ.**

DATE : 3rd September, 2025

ORAL JUDGMENT *(Per Ravindra V. Ghuge, J.)*

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioner has put forth the following prayers :

“(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ in the nature of Certiorari thereby quashing and setting aside the Order/ Letter bearing No. Payfixation-2023 /(1128/23)/Pune Division dated 18th August, 2023 issued by the Respondent No.5 i.e. the Joint Director of the Higher Education denying pension to the Petitioner.

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ in the nature of Mandamus thereby directing the Respondents to grant pension to the Petitioner as per the provisions of Maharashtra Civil Services (Pension) Rules, 1982 by fixing the pay scale of the Petitioner in a time bound manner.”

3. The dates and events germane for deciding this Petition, can be summarized as under:

(a) On 7th September 1989, the Petitioner was appointed on a temporary basis.

(b) The said temporary appointment continued until the year 1993.

(c) He was thereafter appointed on a temporary basis, as an Assistant Professor in Physics for the first term of the academic year, commencing from 1st August 1994.

(d) A similar appointment was made on 1st July 1995, up to the end of the first term of the academic year 1995–1996.

e) Further similar appointments were made for part-terms of various academic years.

(f) The Petitioner was terminated from his temporary appointment on 15th July, 1998.

(g) The Petitioner approached the College and University Tribunal by filing Appeal No. 38 of 1998. By judgment dated 28th July 2000, the Appeal was allowed and the Petitioner was granted reinstatement in service until an ST candidate was selected and appointed through the regular selection procedure. However, his claim for being treated as a permanent employee with continuity of service, by reckoning his earlier temporary service, was specifically rejected.

(h) The college published an advertisement dated 20th June 2005, inviting applications for the post of Lecturer in Physics.

The Petitioner was one of the Applicants.

(i) The advertisement was published in largely circulated newspapers, such as *Pudhari*, *Indian Express*, and *Loksatta*, on 20th June, 2005.

(j) Interviews were conducted on 24th September, 2005.

(k) The Petitioner received an appointment order dated 21st November 2005, specifically referring to the advertisement and the selection process. Possessing the requisite qualifications of M.Sc. and Ph.D., he was appointed on probation from the Open Category.

(l) After completion of the probation period, the Petitioner was granted permanency. He superannuated on 31st January, 2018.

(m) The Petitioner has approached this Court in view of the rejection of the proposal forwarded by the Management for grant of pensionary benefits, by Respondent No. 5, vide the impugned order dated 18th August, 2023.

(n) The sole ground for refusal of pensionary benefits is that the Petitioner's appointment was made after 31st October, 2005.

4. The impugned order passed by the State is based on the Government Resolution (GR) dated 31st October, 2005. It needs to be noted that, by the said GR, the State of Maharashtra took a policy decision that those employees who were appointed, on or before 31st October, 2005 and whose employer was receiving 100% grant-in-aid, would be entitled to the Old Pension Scheme (OPS). Those employees who are not covered by the said Scheme, would be eligible for the Defined Contributory Pension Scheme (DCPS). There is no dispute that the Petitioner's Employer was 100% grant-in aid prior to the cut-off date.

5. The controversy arose as to whether candidates whose selection process commenced prior to 31st October 2005, but, were appointed thereafter through the said process, would be entitled to the OPS or the DCPS. In *Dnyaneshwar Balasaheb Sonawane and Others Versus State of Maharashtra and Others*¹, this Court (Coram: Ravindra V. Ghuge and Sandipkumar C. More, JJ.) analyzed the GR dated 31st October, 2005 and concluded as under :

1 2022 SCC OnLine Bom 1253

“14. It is thus, clear that recruitment is just an initial process that MAY lead to eventual appointment in service. But, that cannot tantamount to an appointment. In the notification introducing the Amendment Rules, 2005, Rule 2(2) has been introduced by way of an amendment indicating that the Commutation of Pension Rules, 1984 would not apply to government servants who are recruited on or after 1 -11-2005. The term "recruitment" has nowhere been defined in the Pension Rules applicable to the government employees.

15. There is no dispute or contra argument that Marathi language is the official language insofar as the Maharashtra State is concerned. The disentitlement clause for being eligible for the old pension scheme, in the Marathi version is in the Government Resolution dated 31-10-2005, which is at page 385 of the petition paper book. Clause 2(A) of this Government Resolution reads thus:-

"२. (अ) शासनाने आता असा निर्णय घेतला आहे कि १ नोव्हेंबर रोजी किंवा त्यानंतर नियुक्त होणाऱ्या कर्मचाऱ्यांसाठी, सध्या अस्तित्वात असलेल्या निवृत्तीवेतन योजने ऐवजी, केंद्र शासनाच्या धर्तीवर, नवीन "परिभाषित अंशदान निवृत्तिवेतन योजना" (Defined Contribution Pension Scheme) खाली नमूद केल्यानुसार लागू करण्यात येईल"

16. The Marathi word appearing in the Government Resolution dated 31-10-2005 means appointed. The Marathi word does not mean recruitment or process of recruitment. The word "recruitment" in Marathi means which includes the recruitment process, which is the process undertaken for selection and appointment of candidates. We are, therefore, of the view that the Marathi version indicating the word "appointment" would lead to the interpretation of the disentitlement clause as being appointed on or after

1-11-2005. Be that as it may, even if the contention of the learned advocate for the petitioners is accepted, the recruitment process ended on 19-12-2005, which is much after the cut off date 1-11-2005.”

6. This Court (Coram: Ravindra V. Ghuge and Sanjay A. Deshmukh, JJ.) in Review Application No. 233 of 2023 in Writ Petition No. 1615 of 2023, delivered a judgment at Aurangabad on 12th October, 2023 (*Vasantrao Naik Marathwada Krishi Vidyapeeth, Parbhani Versus Ganpat S/o. Maroti Sutare and Another*) and interpreted the said GR. It was concluded that since Marathi is the Rajyabhasha (State’s official language), the Marathi version of the GR needs to be followed. This issue attracted the attention of the Court in *Ganpat S/o. Maroti Sutare (supra)*, in view of the English translation issued by the State Government, which erroneously used the word 'recruitment' ("भरती प्रक्रीया") instead of 'appointment' ("नियुक्ती"), as found in the original Marathi version. The relevant paragraphs of the said judgment read as under:

“12. The Marathi version of the Government Resolution, is published in the State language and it is not in dispute that in the event of any discrepancy, the Government Resolution in the State language would prevail. The marathi version was not brought to the notice of the Court in Khilari Rajendra (supra). So also, the judgment delivered in Dnyaneshwar Sonawane (supra) at Aurangabad, wherein the Marathi as well as the

English version of the Government Resolution was considered, was not cited before the Court which decided Khilari Rajendra (supra).

13. *In the light of the above, we have referred to the judgments of the learned Full Bench of this Court in **Vinayak Hari Kulkarni Vs. State of Maharashtra, 2010(4) Mh.L.J. (F.B.) 868** and **Kahera Sayed Vs. State of Maharashtra, 2018(1) Mh.L.J. (F.B.) 884**. We are, therefore, of the view that it would be advantageous to refer the above inconsistency or difference of opinion on the interpretation and meaning of the Marathi version of the Government Resolution dated 31.10.2005 vis-vis the English version and Rule 2(2) of the M.C.S. (Pension) Rules, 1982, to The Hon'ble The Chief Justice of the Bombay High Court in view of Rule 8 below Chapter I of the Bombay High Court Appellate Side Rules, 1960.*

14. *We, therefore, frame the following issue for reference :-*

While considering the applicability of either the old Pension scheme or the Defined Contribution Pension Scheme, whether the word "नियुक्ती" (appointment) as set out in the Government Resolution dated 31.10.2005 in the State language Marathi, would be decisive or whether the word "recruitment" ("भरती प्रक्रीया") appearing in the English version of the Government Resolution dated 31.10.2005, should apply to the situation, considering Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982?"

7. The said judgment (*supra*) was not cited before the Bench at the Principal Seat in ***Khilari Rajendra Eknath and Others V/s. The State of Maharashtra and Others***¹. That Court interpreted the English translation of the GR and concluded that if the recruitment process commenced prior to 31st October, 2005 and the appointment was made thereafter, such candidates would be entitled to the OPS. These circumstances led to the constitution of the Full Bench to resolve the divergent views.

8. In the interregnum, before the Full Bench could decide the referred issue, the State of Maharashtra issued a GR dated 2nd February 2024, referring to the GR dated 31st October 2005, and provided that employees could opt for the OPS by making an application to the State Government, which would pass an appropriate order within six months, if their selection process had commenced before 31st October, 2005 and were appointed after the said date.

9. The Full Bench of this Court, at Aurangabad, in ***Vasantrao Naik Marathwada Krishi Vidyapeeth Through Its Registrar Versus Ganpat***

1 Writ Petition No. 2270 of 2021 dated 28th April, 2023.

Maroti Sutare and Another² observed as under :

“5. Learned advocate Mr. Navandar for the review applicant-university would vehemently controvert the situation by adverting our attention to the fact that this government notification has been issued pursuant to the observation of this Court in the matter of ***Khilari Rajendra Eknath*** (supra) wherein, in paragraph no. 31, it had hoped and trusted the State government to issue office memorandum in tune with a similar one issued by the Central government on 03-03-2023, clarifying that in all cases where the State government employees have been appointed against a post or vacancy which was advertised /notified for recruitment / appointment prior to the date of notification for Defined Contributory Pension Scheme i.e. 31-10-2005 and expecting the State government to give a one time option to the employees to be governed by the Maharashtra Civil Services (Pension) Rules, 1982. He would submit that since the State government had decided to resort to Defined Contributory Pension Scheme in tune with a similar decision taken by the Central government and has now pursuant to the observations in the matter of ***Khilari Rajendra Eknath*** has resorted to issuance of a notification for giving a similar benefit of giving a one time option to the employees who are similarly situated, the matter does not remain merely academic.

6. In our considered view, the reasons for issuance of notification dated 02-02-2024 are absolutely irrelevant, to consider as to if this notification gives quietus to the issue referred to us. The entire controversy has erupted in view

2 Review Application No. 233 of 2023 in Writ Petition No. 1615 of 2023 dated 19th April, 2024

of the dichotomy and particularly in the phrases used in the Marathi government resolution dated 01-11-2005 and its English translation. Ex facie, notification dated 02-02-2024 gives an opportunity to the government officers and employees who had undertaken a recruitment process commenced before 01-11-2005, but their appointment orders have been issued after that date, to exercise the option.

*7. All such employees where the recruitment process had commenced prior to 01-11-2005, will have an option now to be exercised either to agree, to be governed by the old pension scheme or by the Defined Contributory Pension Scheme. Since this notification does not admit of any exception, in our considered view, it would be applicable to all similarly placed employees, irrespective of the view taken in the matter of **Khilari Rajendra Eknath** (supra) or a contrary view in the matter of **Dnyaneshwar Balasaheb Sonawane**. Neither side could demonstrate as to how any employee who is similarly placed would not be covered by the notification dated 02-02-2024.*

8. We, therefore, find no substance in the submission of the learned advocate Mr. Navandar and feel that it is not necessary to decide the issue referred to us. The government notification dated 02-02-2024 puts at rest the controversy.”

10. In the case of the present Petitioner, as noted above, the publication of the advertisement and his selection took place prior to the cut-off date and he was issued with an appointment order on 21st November,

2005. He desires to opt for OPS in view of the GR dated 2nd February, 2024.

11. In view of the above, **this Writ Petition is allowed in terms of prayer clauses (a) and (b)**, which are reproduced above.

12. The proposal sent by the Management to Respondent No. 5, stands restored to the file of the said authority, who shall pass a formal order approving the OPS and settle the pension scale within 30 days. We expect the commencement of payment of the Petitioner's full pension under the OPS, within 30 days thereafter.

13. All authorities that may be concerned with the approval of the pension, including the Office of the Accountant General, shall ensure that the said exercise is completed within 30 days from the date of the passing of the order by Respondent No. 5.

14. Rule is made absolute in the above terms.

(GAUTAM A. ANKHAD, J.)

(RAVINDRA V. GHUGE, J.)